

authority to consider Guamcell's petition under section 214(e)(6) of the Act. Guamcell submitted an "affirmative statement" from the Guam Commission, stating that the Guam Commission "does not presently regulate the permitting, rates or business activities of telecommunications carriers other than GTA." n20 This conclusion appears to be consistent with the Guam law, which limits the Guam Commission's regulatory oversight authority to statutorily defined public utilities. n21 The Guam Code defines a "public utility" as:

[*1506] The Guam Power Authority, *the Guam Telephone Authority*, the Guam Waterworks Authority, the Guam Memorial Hospital Authority or any duly licensed private contractor operating: (i) a facility [**11] or subsystem of the community-wide water production and distribution system, or (ii) a facility or subsystem of the community-wide waste water disposal system, or both, or any private golf course management corporation leasing public property providing preferential golf rates and reservations to Guam residents. n22

n20 See Guam Commission Letter.

n21 12 Guam Code Ann. § 12004 (2001).

n22 See 12 Guam Code Ann. § 12000 (2001) (emphasis added).

8. Under the circumstances, we find that the Guam Commission Letter constitutes an affirmative statement that the Guam Commission lacks jurisdiction to designate Guamcell as an eligible telecommunications carrier under section 214(e)(2) of the Act. We conclude, therefore, that the Commission has authority to perform the requested ETC designation pursuant to section 214(e)(6).

9. *Offering the Services Designated for Support.* We find that Guamcell has demonstrated that it now offers or will offer the services supported by the federal universal service mechanisms upon its designation as an ETC. Therefore, we conclude that Guamcell complies with the requirement of section 214(e)(1)(A) to "offer the services that are [**12] supported by Federal universal service support mechanisms under section 254(c)." n23

n23 47 U.S.C. § 214(e)(1)(A).

10. As noted in its petition, Guamcell is a CMRS carrier "licensed to provide cellular radiotelephone service on frequency block A in the Guam RSA [Rural Service Area]." n24 Guamcell states that it currently provides all of the services and functionalities enumerated in section 54.101(a) of the Commission's rules throughout its cellular service area in Guam. n25 Upon designation as an ETC, Guamcell also indicates that it will continue to make available its universal service offering. n26 Finally, Guamcell commits to provide service to any requesting customer within the designated service area. n27

n24 Guamcell Petition at 1.

n25 *Id.* at 2.

n26 *Id.*

n27 *Id.*

11. The Guamcell Petition was not opposed by any parties. n28 No party disputes that Guamcell has the capability to offer voice-grade access to the public network, the functional equivalents to DTMF signaling and single-party service, access to operator services, access to interexchange services, access to directory assistance, and toll limitation

for [**13] qualifying low-income consumers. n29 Nor does any party dispute that Guamcell complies with applicable law [**1507] and Commission directives on providing access to emergency services. n30 In addition, although the Commission has not set a minimum local usage requirement, Guamcell commits to comply with any and all minimum local usage requirements adopted by the Commission and will include local usage as part of its universal service offering. n31 In sum, we conclude that Guamcell has demonstrated that it will offer each of the supported services upon designation as an ETC in Guam.

n28 On August 1, 2001, the Common Carrier Bureau released a Public Notice seeking comment on the Guamcell Petition. *See Common Carrier Bureau Seeks Comment on Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, CC Docket No. 96-45, Public Notice, DA 01-1842 (rel. Aug. 1, 2001). *See also 66 Fed. Reg. 41233* (Aug. 7, 2001). No comments were submitted in response to the Public Notice.

n29 Pursuant to section 254(c), the Commission has defined those services that are to be supported by the federal universal service mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

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n30 *See 47 C.F.R. § 54.101(a)(5)* (stating that access to emergency services includes access to 911 and enhanced 911 to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems). Guamcell currently provides all of its customers with access to emergency services by dialing 911. Guamcell indicates that no public emergency service provider in Guam has requested E-911 service from Guamcell. Guamcell Petition at 6.

n31 Guamcell Petition at 5.

12. *Offering the Supported Services Using a Carrier's Own Facilities.* We conclude that Guamcell has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services. n32 Guamcell states that it intends to provide the supported services "using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers." n33 We find this certification sufficient to [**15] satisfy the requirements of section 214(e)(1)(A).

n32 47 U.S.C. § 214(e)(1)(A).

n33 Guamcell Petition at 8.

13. *Advertising the Supported Services.* We conclude that Guamcell has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution. n34 Guamcell certifies that it will advertise the availability of its universal service offering, and the charges therefor, using media of general distribution. n35 Guamcell currently advertises its wireless services through various media, including newspaper, television, and radio. n36 Guamcell states that it "will use the same media of general distribution that it currently employs to advertise its universal service offerings" throughout the designated service area. n37 We find this certification sufficient to satisfy the requirements of section 214(e)(1)(B).

Moreover, because ETCs receive universal service support only to the extent that they serve customers, we believe that strong economic incentives exist, in addition to the statutory obligation, to advertise the universal [**16] service offering in Guam.

n34 47 U.S.C. § 214(e)(1)(B).

n35 Guamcell Petition at 8-9.

n36 *Id.*

n37 *Id.* at 9.

[*1508] 14. *Public Interest Analysis.* We conclude that it is in the public interest to designate Guamcell as an ETC in the designated service area that is served by GTA, the rural telephone company in Guam. At the outset, we note that no parties filed oppositions to the Guamcell Petition. n38 We conclude that Guamcell has made a threshold demonstration that its service offering fulfills several of the underlying federal policies favoring competition. There is nothing in the record to dispute Guamcell's contention that its provision of competitive service and new technologies in high-cost and rural areas will benefit consumers in Guam. n39

n38 Pursuant to the guidelines established in the *Twelfth Report and Order*, the Bureau released, and published in the Federal Register, a Public Notice establishing the pleading cycle for Guamcell's designation request. To ensure that the state commission was notified of this proceeding, the Commission overnight-mailed the Public Notice directly to the Guam Commission. This process is specifically designed to notify and encourage participation by the states. The Guam Commission has not filed comments in this proceeding,

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n39 The fact that neither the Guam Commission nor Guam Telephone Authority challenged the Guamcell Petition provides further support for a conclusion that the public will benefit from Guamcell's ETC designation.

15. We note that an important goal of the Act is to open local telecommunications markets to competition. n40 Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies. We find that the island of Guam will benefit from competition in the provision of telecommunications service. We agree with Guamcell that competition in Guam should result not only in increased choices, higher quality service, and lower rates, but will also provide an incentive to the incumbent rural telephone company to introduce new and innovative services, including advanced service offerings, to remain competitive, resulting in improved service to Guam consumers. n41 We also find that the provision of competitive service will facilitate universal service to the benefit of consumers in Guam by creating incentives to ensure that quality services are available at "just, reasonable, and [**18] affordable rates." n42

n40 According to the Joint Explanatory Statement, the purpose of the Act is "to provide for a pro-competitive, de-regulatory national policy framework designated to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . ." Joint Explanatory Statement of the Committee of the Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 131.

n41 Guamcell Petition at 9-10.

n42 47 U.S.C. § 254(b)(1).

16. Although we recognize the substantial benefits of competition to consumers, we conclude that additional factors may be taken into consideration in the public interest examination required by section 214(e)(6) prior to the designation of an additional ETC in an area served by a rural telephone company, such as whether consumers will be harmed. In so doing, we acknowledge that Congress expressed a specific intent to preserve and advance universal service in rural areas as competition emerges. n43 Specifically, we believe that Congress sought to ensure that consumers in areas [**19] served by rural telephone companies continue to be adequately served should the incumbent telephone company seek to relinquish its ETC [*1509] designation under section 214(e)(4). n44

n43 47 U.S.C. § 214(e)(6) (stating that before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest). *See also* 47 U.S.C. § 254(b)(3).

n44 *See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 16 FCC Rcd 48, 56 at para. 18 (Com. Car. Bur. 2000) (citing Letter from Earl W. Comstock, Counsel for Nucentrix, to Magalie Roman Salas, Federal Communications Commission, dated October 25, 2000).

17. Guamcell demonstrates both the commitment and ability to provide service to rural consumers. Nothing in the record before us indicates that Guamcell may be unable to satisfy its statutory ETC obligations after designation. We note that Guamcell currently operates cell sites capable of serving [**20] 100% of Guam's population. n45 Guamcell also indicates that it can provide the supported services using its own facilities. n46 By choosing to use its own facilities to provide service in Guam, Guamcell can continue to offer service to any requesting customer even if the incumbent carrier subsequently withdraws from providing service. n47 Guamcell also has indicated that it will provide service to any customer requesting service within the designated service area. n48

n45 Guamcell Petition at 1.

n46 *See* Guamcell Petition at 8 (noting that Guamcell will provide the supported services using its existing network infrastructure).

n47 We note, however, that an ETC is not required to provide service using its own facilities. Section 214(e)(1)(A) allows a carrier designated as an ETC to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." 47 U.S.C. § 214(e)(1)(A).

n48 Guamcell Petition at 2.

18. *Designated Service Areas*. Consistent with Guamcell's request, we designate Guamcell as an ETC for a service area that covers the entire territory [**21] of Guam. n49 This service area encompasses the entire study area of the incumbent rural carrier, GTA. n50 Guamcell's cellular geographic area covers the entire designated area and Guamcell currently provides cellular service throughout Guam.

n49 *See* Guamcell Petition at 9. Under section 214(e)(5) of the Act, "service area" connotes a geographic area established by a state commission, or the Commission under section 214(e)(6), for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5).

n50 A "study area" is usually an incumbent LEC's existing service area in a given state. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8872 n.434 (1997). The "service area" of a common carrier seeking to be designated as an ETC in an area served by a rural telephone company must be the rural telephone company's study area, unless a different definition is established

by the Commission and the states as provided under the Act. *See* 47 U.S.C. § 214(e)(5).

IV. ANTI-DRUG ABUSE [**22] ACT CERTIFICATION

19. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits. n51 This certification must also include the names of individuals specified [*1510] by section 1.2002(b) of the Commission's rules. n52 Guamcell has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988. n53 We find that Guamcell has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

n51 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

n52 Section 1.2002(b) provides that a certification pursuant to that section shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

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n53 *See* Guamcell Petition at 11 and Exhibit D.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, Guam Cellular and Paging, Inc. d/b/a Guamcell Communications IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for the territory of Guam, as discussed herein.

21. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Common Carrier Bureau to the Universal Service Administrative Company.

Carol E. Matthey

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Legal Topics:

For related research and practice materials, see the following legal topics:

Communications LawIntrastate CommunicationsState RegulationCommunications LawTelephone ServicesCellular ServicesCommunications LawU.S. Federal Communications CommissionJurisdiction